IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

NOTICE OF MOTION NO. 156 OF 2005

IN

NOTICE NO. N/55 OF 2005

Re: Nandkishore L. Kagliwal
and anr. ....Judgment Debtors

Ex-parte :
Mandvi Co-operative Bank
Ltd .....Judgment creditors

D.R. Talankar i/by. Smt. A.A. Dahiwalle
for judgment creditors.
Mr. Kishore Jain i/by. G.R. Mehta
for judgment debtors.

CORAM: S.U. KAMDAR, J.

DATED: 18TH APRIL, 2006.

P.C. :

1. Learned counsel for the judgment debtor has raised three objections in support of his Notice of motion. Firstly it has been contended that under Section 11 this court has no jurisdiction to entertain the present insolvency

proceedings because he is not a resident of Bombay and nor carries on business within the territorial jurisdiction of this court. However he has fairly conceeded that there are already judgments of this court holding that, that issue has to be determined at the hearing of the petition and not at the hearing of the Notice of Motion. Inview thereof the said objection is required to be rejected.

2. The next contention advanced is inrespect of the argument that the award passed under the provisions of the Maharashtra Co-operative Societies Act, 1960 and the consequence issuance of recovery certificate is not an order or a decree as provided under Section 9 of the Presidency Towns Act. However the said submission is required to be rejected in view of my order and judgment in Notice of Motion No. 251 of 2004 in Notice No. N/72 of 2004 in the case of Re: Deepak Cochhar and Anr.

3. The third and last contention advanced is

that an application is made by the company towards applying for an arrangement under Section 391 of the Companies Act I of 1956. The provisions of Section 391 inter-alia stipulates that a company can file a proposal for arrangement between a company and its creditors or any class of people or between a company or its members or any class of them. Under the provisions of Section 391 of the said Act the case of the guarantor on behalf of the company is not covered. In the present case the notice of insolvency has been issued to a person who was the guarantor and he has suffered an award decree in his capacity as guarantor. In view of the wordings of section 391 which contemplates compromise or arrangement between the company on one hand and the creditors and members on the other hand inrespect of the debt of the company in my opinion the guarantor is not entitled to claim any benefit of Section 391 of the said Act. In view thereof the present motion is required to be dismissed. Motion is accordingly dismissed. No order as to costs.

sd/-

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